

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, 12-18, 20-21, 24-26, 28-29, 30-33 and 36-40 drawn to method for use in automatic monitoring the body condition of an animal, classified in class 382, subclass 110.
  - II. Claim 22 drawn to analyzing said data to identify the existence of a certain pattern of locomotion or in-coordination in the cow's marching, classified in class 356, subclass 603.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions 1-II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility such as analyzing said data to identify the existence of a certain pattern of locomotion or in-coordination in the cow's marching. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together or combination. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if

any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement**

may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

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Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. During a telephone conversation with NEIMARK, SHERIDAN on April 10, 2008 a provisional election was made without traverse to prosecute the invention of "Imaging system and method for body condition evaluation", application number 10/523204 claims 1-10, 12-18, 20-22, 24-26, 28-29, 30-33 and 36-40. Affirmation of this election

must be made by applicant in replying to this Office action. Claim 22 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by et al Ellis (US Patent No.: 6,549,289).

As to independent claim 1, Ellis disclose an imaging method for use in automatic monitoring the body condition of an animal (method for evaluating the physical characteristics of animals - see column 1, lines 6-15), the method comprising: i) imaging a predetermined region of interest on the animal body, and generating data indicative thereof (projecting light circles unto the animal - see column 2, lines 45-50); ii) processing the generated data to obtain a three-dimensional representation of the region of interest (generate three dimensional of a single location – see column 2, lines 40-46); iii) analyzing said three-dimensional representation to determine a predetermined measurable parameter indicative of a surface relief of the region of interest indicative of the body condition (see column 4, lines 24-32).

***Allowable Subject Matter***

6. Claims 2-10, 12-18, 20-21, 24-26, 28-29, 30-33 and 36-40 are allowed
7. The following is an examiner's statement of reasons for allowance: None of the prior art teaches or fairly suggest method for optimizing nutrition of an animal, the method comprising automatically monitoring the energy balance of the animal, said monitoring comprising: 1) imaging a predetermined region of interest on the animal body, and generating data indicative thereof; ii) processing the generated data to obtain a three-dimensional representation of the region of interest; iii) analyzing said three-dimensional representation to determine a predetermined measurable parameter indicative of a surface relief of the region of interest indicative of the energy condition of the animal.

***Conclusion***

8. The prior art made part of the record and not relied upon is considered pertinent to applicant's disclosure.
- Scofield et al (US Patent No.: 5483441), Kriesel (US Patent No.:7039220), Ellis (US Patent No.: 5412420), Kriesel (US Patent No.: 6974373) all cited to disclose method and apparatus related to imaging animals.

***Inquires***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDRAE S. ALLISON whose telephone number is (571)270-1052. The examiner can normally be reached on Monday-Friday, 8:00 am - 5:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Andrae Allison

September 13, 2008

/Samir A. Ahmed/

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Supervisory Patent Examiner, Art Unit 2624